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SECURITIES AND EXCHANGE COMMISSION

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Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Expiration Dates of FINRA Rules 0180 (Application of Rules to Security-Based Swaps) and 4240 (Margin Requirements for Credit Default Swaps) and Amend FINRA Rule 4240 to add Supplementary Material .02.

September 1, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 20, 2021, the Financial Industry Regulatory Authority, Inc. (“FINRA”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to (i) extend the expiration date of FINRA Rule 0180 (Application of Rules to Security-Based Swaps) to February 6, 2022 and (ii) extend to April 6, 2022 the implementation of FINRA Rule 4240 (Margin Requirements for Credit Default Swaps) and clarify that the rule does not apply if a member is registered with the SEC as a security-based swap (“SBS”) dealer (“SBSD”).

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 8, 2011, FINRA filed for immediate effectiveness FINRA Rule 0180, which, with certain exceptions, temporarily limits the application of FINRA rules with respect to SBS, thereby avoiding undue market disruptions resulting from the change to the definition of "security" under the Act to expressly encompass SBS.<sup>4</sup> Pending the SEC's final implementation of its rulemakings under Title VII of the Dodd-Frank Act,<sup>5</sup> FINRA extended the expiration date of FINRA Rule 0180 a number of times, most recently in January 2020, when FINRA extended the expiration date to September 1, 2021.<sup>6</sup> In addition, on May 22, 2009, the Commission

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<sup>4</sup> See Securities Exchange Act Release No. 64884 (July 14, 2011), 76 FR 42755 (July 19, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2011-033).

<sup>5</sup> See Pub. L. No. 111-203, 124 Stat. 1376 (2010), Section 701.

<sup>6</sup> See Securities Exchange Act Release No. 88023 (January 23, 2020), 85 FR 5261 (January 29, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-001).

approved FINRA Rule 4240,<sup>7</sup> which implements an interim pilot program (the “Interim Pilot Program”) with respect to margin requirements for certain transactions in credit default swaps (“CDS”).<sup>8</sup> On June 2, 2020, FINRA filed a proposed rule change for immediate effectiveness extending the implementation of FINRA Rule 4240 to September 1, 2021.<sup>9</sup> Therefore, both FINRA Rule 0180 and the Interim Pilot Program under FINRA Rule 4240 are currently scheduled to expire on September 1, 2021.

On April 26, 2021, FINRA filed a proposed rule change to amend FINRA Rules 0180, 4120, 4210, 4220, 4240 and 9610 to clarify the application of its rules to SBS following the SEC’s completion of its rulemaking under Title VII of the Dodd-Frank Act regarding SBSs and major SBS participants (collectively, “SBS Entities”).<sup>10</sup> Among other things, the Proposal would adopt a new FINRA Rule 0180, to replace expiring current FINRA Rule 0180, that would generally apply FINRA rules to members’ activities and positions with respect to SBS, while providing limited exceptions for SBS in circumstances where FINRA believes such exceptions are appropriate. The Proposal would also adopt a new margin rule specifically applicable to SBS, which would replace the expiring Interim Pilot Program establishing margin requirements for CDS. FINRA originally proposed that the effective date of the Proposal would be October 6, 2021, to align with the SEC’s compliance date for registration of SBS Entities (the “Registration Compliance Date”). FINRA noted in the Proposal that it intended to extend the expiration dates

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<sup>7</sup> See Securities Exchange Act Release No. 59955 (May 22, 2009), 74 FR 25586 (May 28, 2009) (Order Approving File No. SR-FINRA-2009-012).

<sup>8</sup> In March 2012, the SEC approved amendments to FINRA Rule 4240 that, among other things, limit the rule’s application to CDS that are SBS. See Securities Exchange Act Release No. 66527 (March 7, 2012), 77 FR 14850 (March 13, 2012) (Order Approving File No. SR-FINRA-2012-015).

<sup>9</sup> See Securities Exchange Act Release No. 89036 (June 10, 2020), 85 FR 36458 (June 16, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2020-016).

<sup>10</sup> See Securities Exchange Act Release No. 91789 (May 7, 2021), 86 FR 26084 (May 12, 2021) (Notice of Filing of File No. SR-FINRA-2021-008) (“Proposal”).

of existing FINRA Rules 0180 and 4240 to October 6, 2021 to align with the Registration Compliance Date and implementation of the Proposal.<sup>11</sup>

After consideration of comments on the Proposal, as well as further feedback from member firms, on August 9, 2021 FINRA filed Partial [sic] Amendment No. 1 to the Proposal.<sup>12</sup> The Amendment (1) extends the effective date of the proposed amendments to FINRA Rules 0180, 4120 and 9610 from October 6, 2021 to February 6, 2022; (2) extends the effective date of the proposed amendments to FINRA Rules 4210, 4220 and 4240 from October 6, 2021 to April 6, 2022; and (3) conforms the proposed definition of “Legacy Swap” in proposed FINRA Rule 4240(d)(12) to reflect the new effective date of April 6, 2022. FINRA noted in the Amendment that it intended to extend the expiration date of existing FINRA Rule 0180 until February 6, 2022, and the expiration date of existing FINRA Rule 4240 until April 6, 2022, so as to align with the new effective dates of the Proposal described above.<sup>13</sup> Accordingly, the proposed rule change (i) amends existing FINRA Rule 0180 to extend the expiration date of the rule from September 1, 2021 to February 6, 2022 and (ii) amends existing FINRA Rule 4240 to extend the expiration date of the Interim Pilot Program from September 1, 2021 to April 6, 2022. FINRA believes it is appropriate to extend the expiring rules so as to align with the effective dates of the new rules that will replace them, thereby avoiding undue burdens on market participants and undue market disruption.

FINRA also noted in the Amendment that, beginning on the Registration Compliance Date, members may register with the SEC as SBSs, and thereby become subject to the margin

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<sup>11</sup> See Proposal, supra note 10, at 26086 n.18.

<sup>12</sup> See Securities Exchange Act Release No. 92617 (August 9, 2021), 86 FR 44761 (August 13, 2021) (Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change, as Modified by Amendment No. 1, Relating to Security-Based Swaps) (“Amendment”).

<sup>13</sup> See supra note 12.

requirements applicable to SBSDs under Exchange Act Rule 18a-3.<sup>14</sup> Therefore, if a member were to register as an SBSD on the Registration Compliance Date or during the period between the Registration Compliance Date and April 6, 2022, the member would be subject to both the new margin requirements for SBS under Exchange Act Rule 18a-3 and the expiring Interim Pilot Program for CDS. In order to avoid unnecessary regulatory duplication or any potential conflicting obligations as between Exchange Act Rule 18a-3 and the Interim Pilot Program, FINRA is also amending existing, expiring FINRA Rule 4240 to add Supplementary Material .02 to clarify that the rule does not apply to a member that is registered with the SEC as an SBSD.<sup>15</sup>

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change on September 1, 2021.

## 2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>16</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change would further the purposes of the Act because the proposed rule change will help to avoid undue burdens on market participants and undue market disruption that

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<sup>14</sup> See supra note 12.

<sup>15</sup> FINRA notes that this provision is consistent with the new SBS margin rule under the Proposal, which provides that a member that is registered as an SBSD shall instead comply with Exchange Act Rule 18a-3. As discussed in the Proposal, FINRA believes it should defer to the SEC's margin framework for registered SBSDs rather than impose additional or different requirements on such entities. See Proposal, supra note 10, at 26098.

<sup>16</sup> 15 U.S.C. 78o-3(b)(6).

could result if existing FINRA Rule 0180 expires before the effective date of new FINRA Rule 0180. Similarly, FINRA believes that the proposed rule change is consistent with the Act because extending the implementation of FINRA Rule 4240 will ensure that the Interim Pilot Program establishing margin requirements for CDS will continue to apply until the new SBS margin rule under new FINRA Rule 4240 becomes effective, thereby helping to promote stability in the financial markets and regulatory certainty for members. FINRA further believes that clarifying that the Interim Pilot Program does not apply to a registered SBSB will promote legal certainty and avoid unnecessary regulatory duplication.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that the proposed rule change would prevent undue burdens on market participants and undue market disruption that would otherwise result if FINRA Rule 0180 expires before the effective date of new FINRA Rule 0180. FINRA believes that, by extending the expiration of FINRA Rule 0180, the proposed rule change will serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection. Similarly, FINRA believes that extending the implementation of the Interim Pilot Program under FINRA Rule 4240 will ensure that the Interim Pilot Program establishing margin requirements for CDS will continue to apply until the new SBS margin rule under new FINRA Rule 4240 becomes effective, thereby helping to promote stability in the financial markets and regulatory certainty for members. FINRA further believes that clarifying that the Interim Pilot Program does not apply to a registered SBSB will promote legal certainty and avoid unnecessary regulatory duplication.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>17</sup> and Rule 19b-4(f)(6) thereunder.<sup>18</sup>

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>18</sup> 17 CFR 240.19b-4(f)(6).

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>19</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has requested that the Commission waive the 30-day operative delay requirement so that the proposed rule change may become operative on September 1, 2021. The Commission hereby grants the request. The proposed rule change is consistent with the goals set forth by the Commission when it issued the original temporary exemptive relief,<sup>20</sup> as well as the subsequent extensions of the temporary exemptive relief,<sup>21</sup> and

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<sup>19</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>20</sup> See Exchange Act Release No. 64795 (Jul. 1, 2011), 76 FR 39927 (Jul. 7, 2011) (Order Granting Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With the Pending Revision of the Definition of “Security” To Encompass Security-Based Swaps, and Request for Comment); see also supra note 7.

<sup>21</sup> See supra note 9 (extending the implementation of FINRA Rule 4240 to September 1, 2021); supra note 6 (extending the expiration date of FINRA Rule 0180 to September 1, 2021); Exchange Act Release No. 85981 (May 31, 2019), 84 FR 26486 (Jun. 6, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2019-016) (extending the implementation of FINRA Rule 4240 to July 20, 2020); Exchange Act Release No. 85062 (Feb. 6, 2019), 84 FR 3524 (Feb. 12, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2019-001) (extending the expiration date of FINRA Rule 0180 to February 12, 2020); Exchange Act Release No. 83474 (Jun. 20, 2018), 83 FR 29840 (Jun. 26, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2018-025) (extending the implementation of FINRA Rule 4240 to July 18, 2019); Exchange Act Release No. 82480 (Jan. 10, 2018), 83 FR 2480 (Jan. 17, 2018) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2018-001) (extending the expiration date of FINRA Rule 0180 to February 12, 2019); Exchange Act Release No. 81035 (Jun. 27, 2017), 82 FR 30914 (Jul. 3, 2017) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2017-019) (extending the implementation of FINRA Rule 4240 to July 18, 2018); Exchange Act Release No. 79752 (Jan. 6, 2017), 82 FR 3824 (Jan. 12, 2017) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2017-001) (extending the expiration date of FINRA Rule 0180 to February 12, 2018); Exchange Act Release No. 78182 (Jun. 28, 2016), 81 FR 43690 (Jul. 5, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2016-020) (extending the implementation of FINRA Rule 4240 to July 18, 2017); Exchange Act Release No. 76850 (Jan. 7, 2016), 81 FR 1666 (Jan. 13, 2016) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2016-001) (extending the expiration date of FINRA Rule 0180 to February 11, 2017); Exchange Act Release No. 75069 (May 29, 2015), 80 FR 31931 (Jun. 4, 2015) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2015-013) (extending the implementation of FINRA Rule 4240 to July 18, 2016); Exchange Act Release No. 74049 (Jan. 14, 2015), 80 FR 2983 (Jan. 21, 2015) (Notice of Filing and Immediate



will help avoid undue market interruption resulting from the change of the definition of “security” under the Exchange Act and the expiration of FINRA Rules 0180 and 4240.

Furthermore, the Commission finds that adding Supplemental Material .02 would help avoid unnecessary regulatory duplication or any potential conflicting obligations as between Exchange Act Rule 18a-3 and the Interim Pilot Program. Therefore, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative

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Effectiveness of File No. SR-FINRA-2015-001) (extending the expiration date of FINRA Rule 0180 to February 11, 2016); Exchange Act Release No. 72522 (Jul. 2, 2014), 79 FR 39031 (Jul. 9, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2014-029) (extending the implementation of FINRA Rule 4240 to July 17, 2015); Exchange Act Release No. 71485 (Feb. 5, 2014), 79 FR 7731 (Feb. 10, 2014) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2014-001) (extending the expiration date of FINRA Rule 0180 to February 11, 2015); Exchange Act Release No. 69993 (Jul. 16, 2013), 78 FR 43945 (Jul. 22, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2013-030) (extending the implementation of FINRA Rule 4240 to July 17, 2014); Exchange Act Release No. 69262 (Apr. 1, 2013), 78 FR 20708 (Apr. 5, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2013-019) (extending the expiration date of FINRA Rule 0180 to February 11, 2014); Exchange Act Release No. 68471 (Dec. 19, 2012), 77 FR 76113 (Dec. 26, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2012-056) (extending the expiration date of FINRA Rule 0180 to July 17, 2013); Exchange Act Release No. 67449 (Jul. 17, 2012), 77 FR 43128 (Jul. 23, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2012-035) (extending the implementation of FINRA Rule 4240 to July 17, 2013); Exchange Act Release No. 66528 (Mar. 7, 2012), 77 FR 14848 (Mar. 13, 2012) (Notice of Filing and Order Granting Accelerated Approval of File No. SR-FINRA-2012-014) (extending the implementation of Rule 4240 to July 17, 2012); Exchange Act Release No. 66156 (Jan. 13, 2012), 77 FR 3027 (Jan. 20, 2012) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2012-004) (extending the expiration date of FINRA Rule 0180 to January 17, 2013); Exchange Act Release No. 64892 (Jul. 14, 2011), 76 FR 43360 (Jul. 20, 2011) (Notice of Filing and Order Granting Accelerated Approval of File No. SR-FINRA-2011-034) (extending the implementation of Rule 4240 to January 17, 2012); Exchange Act Release No. 64884 (Jul. 14, 2011), 76 FR 42755 (Jul. 19, 2011) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2011-033) (extending the expiration date of FINRA Rule 0180 to January 17, 2012); Exchange Act Release No. 63391 (Nov. 30, 2010), 75 FR 75718 (Dec. 6, 2010) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2010-063) (extending the implementation of Rule 4240 to July 16, 2011); Exchange Act Release No. 60722 (Sep. 25, 2009), 74 FR 50856 (Oct. 1, 2010) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2009-063) (extending the implementation of Rule 4240 to November 30, 2010).

delay requirement.<sup>22</sup> Therefore, the Commission designates the proposal as operative on September 1, 2021.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2021-021 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2021-021. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all

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<sup>22</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2021-021 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

J. Matthew DeLesDernier,  
Assistant Secretary.

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<sup>23</sup> 17 CFR 200.30-3(a)(12).